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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2032 OF 2005

IN

WRIT PETITION NO.4479 OF 2001

Shaikhar Sinha Shetti ... Applicant

Vs.

Rajaram Bandu Dalvi
(since deceased)
through his legal heirs. ... Opponents

Mr. T.S. Ingale for the applicant.

Mr. S.M. Sabrad for respondents 1, 2, 3(a) and 3(b).

CORAM: SMT. RANJANA DESAI, J.

DATED: 13TH SEPTEMBER, 2005.

P.C.:-

1. This civil application is filed by the applicant, who is the respondent (original defendant) in the writ petition. The opponent in the civil application is the plaintiff. In the civil application, it is prayed that the applicant tenant be permitted to carry out the repairs of roof and ceiling by replacing damaged and broken tiles and cement sheets of the suit premises bearing C.T.S. No.1419 situated at "D" Ward, Jaysingpur, Dist. Kolhapur and allowed to appropriate the same towards future rent payable.

2. I have heard the learned counsel for the parties. The learned counsel for the applicant states that the

suit premises are in a very dilapidated condition and the roof is likely to come down at any time and, therefore, it needs to be repaired. The learned counsel for the opponents, on the other hand, states that the applicant is in arrears of rent and, hence, he cannot be permitted to carry out the repairs. This statement is disputed by the learned counsel for the applicant.

3. At this stage, it is difficult to ascertain whether the entire arrears are paid or not. However, it does appear that the roof of the suit premises is in a dilapidated condition and needs to be repaired. If it is not repaired, some mishap may occur and it has to be prevented. Hence, without prejudice to the rights and contentions of the opponent-plaintiff, the applicant must be permitted to repair the roof from outside and inside at his own cost and that will be be subject to the final decision of the writ petition. In the circumstances of the case, the following order will meet the ends of justice.

O R D E R

(a) The applicant is permitted to carry out the repairs to the roof from outside as well as from inside. It is clarified that he shall merely carry out the repair work and not construct any permanent structure inside or outside

the suit premises. The expense of the repair work will be borne by the applicant. This repair work shall not give rise to any rights in favour of the applicant. Needless to say that even the repair work carried out by the applicant will be subject to the final decision that may be passed in the writ petition.

(b) The learned counsel for the applicant states that under section 23 of the Rent Act, it is the landlord who should carry out the repair work. It will be open to the learned counsel to agitate this issue at the final hearing of the petition and, at that stage, the court will undoubtedly pass orders regarding adjustment of the money spent by the applicant towards arrears of rent if the court finds that such adjustment is required.

(c) Civil application is disposed of.

(SMT. RANJANA DESAI, J.)